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RECORDATION NO. \_\_\_\_\_ FILED 1425

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INTERSTATE COMMERCE COMMISSION

9-348A034

December 14, 1989

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Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Secretary:

As attorney-in-fact for Mellon Financial Services Corporation #3, I enclose six original counterparts of the document described below to be recorded pursuant to section 11303 of title 49 of the United States Code.

This document is a railroad equipment lease dated as of November 15, 1989, a primary document.

The names and address of the parties to the document are as follows:

Lessor:  
Mellon Financial Services Corporation #3  
Suite 1111  
One Mellon Bank Center  
Pittsburgh, Pennsylvania 15258

Lessee:  
Elgin, Joliet & Eastern Railway Company  
135 Jamison Lane  
Monroeville, Pennsylvania 15146

*Charles R. Hute*

The equipment covered by the document consists of 391 100-ton gondola cars, AAR mechanical designation GB, bearing the road numbers of the Elgin, Joliet and Eastern Railway Company

EJ&E 88500 through 88554  
EJ&E 88556 through 88577  
EJ&E 88579 through 88633  
EJ&E 88635 through 88638  
EJ&E 88640 through 88645  
EJ&E 88647 through 88687  
EJ&E 88689 through 88700  
EJ&E 88702 through 88768  
EJ&E 88770 through 88883, and  
EJ&E 88885 through 88899.

A fee of \$13 is enclosed. Please return all counterparts not needed by the Commission for recordation, stamped to show recordation, to Reboul, MacMurray, Hewitt, Maynard & Kristol, 1111 19th Street N.W., Washington, D.C. 20036.

A short summary of the document to appear in the index follows:

Railroad equipment lease dated as of November 15, 1989, between Elgin, Joliet & Eastern Railway Company, lessee, and Mellon Financial Services Corporation #3, lessor, covering 391 100-ton gondola cars, bearing the road numbers of the Elgin, Joliet and Eastern Railway Company EJ&E 88500 through 88554, EJ&E 88556 through 88577, EJ&E 88579 through 88633, EJ&E 88635 through 88638, EJ&E 88640 through 88645, EJ&E 88647 through 88687, EJ&E 88689 through 88700, EJ&E 88702 through 88768, EJ&E 88770 through 88883, and EJ&E 88885 through 88899.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael Kline".

**Interstate Commerce Commission**  
Washington, D.C. 20423

12/14/89

OFFICE OF THE SECRETARY

Michael Rice  
Reboul, MacMurray, Hewitt, Maynard & Kristol  
45 Rockefeller Plaza  
New York, N.Y. 10111

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/14/89 at 2:20pm, and assigned recordation number(s). 16613 & 8120-B

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

16613  
RECORDATION 140 FILED 1425

Duplicate

DEC 14 1989 -2 20 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE HAS BEEN EXECUTED IN COUNTERPARTS. THE COUNTERPART OR COUNTERPART SET HELD BY THE LESSOR OR ANY ASSIGNEE THEREOF IS THE "ORIGINAL," AND ALL OTHER COUNTERPARTS ARE DUPLICATES.

RAILROAD EQUIPMENT LEASE

Dated as of November 15, 1989

between

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

and

MELLON FINANCIAL SERVICES CORPORATION #3

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391 100-ton Gondola Cars

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RAILROAD EQUIPMENT LEASE dated as of November 15, 1989, between ELGIN, JOLIET & EASTERN RAILWAY COMPANY, a Delaware corporation (hereinafter called the Lessee), and MELLON FINANCIAL SERVICES CORPORATION #3, a Pennsylvania corporation, (hereinafter called the Lessor).

WHEREAS the Lessee desires to obtain the use of certain railroad equipment for its business and pursuant to due corporate authority agrees to lease such equipment from the Lessor at the rentals and upon the terms and conditions hereinafter provided;

WHEREAS the Lessor will purchase the equipment described in Schedule A hereto (such equipment as shall be delivered and accepted hereunder being hereinafter called the Equipment) for lease to the Lessee; and

WHEREAS the Lessee, Transtar, Inc. (hereinafter called the Guarantor), and the Lessor are entering into an Equipment Purchase and Lease Financing Agreement dated as of the date hereof (hereinafter called the Purchase Agreement), setting forth certain conditions for the purchase of the Equipment by the Lessor and the lease thereof to the Lessee.

NOW THEREFORE, in consideration of the rentals to be paid and the covenants herein contained, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions:



## Railroad Equipment Lease

### SECTION ONE DELIVERY AND ACCEPTANCE

1.1. Purchase of the Equipment. The Lessor shall purchase the equipment described in schedule A hereto for lease to the Lessee, in accordance with the terms and subject to the conditions of the Purchase Agreement.

1.2. Appointment of Lessee as Agent. The Lessor hereby appoints the Lessee its agent, with full power of substitution, so long as no Event of Default (as defined in section 8.1 hereof) or event that, with the lapse of time or the giving of notice or both, would become an Event of Default, has occurred or is continuing,

(a) to inspect and accept the equipment described in Schedule A hereto on behalf of the Lessor; and

(b) to assert and enforce any rights the Lessor may have against the vendor of such equipment or any unit or component thereof with respect to such vendor's obligations for delivery and warranties.

1.3. Acceptance of Equipment. Upon delivery of such equipment or any unit thereof under the Purchase Agreement, the Lessee shall inspect the same, and if it is found to be acceptable and in conformance with the terms of any purchase contracts and specifications in respect thereof, shall accept such equipment on behalf of the Lessor as agent as aforesaid and execute and deliver a certificate of acceptance describing such equipment and the date of such acceptance, substantially in the form of Exhibit A hereto; upon such acceptance such equipment will be subject to the terms of this lease.

The Lessee shall not accept any unit of such equipment on behalf of the Lessor:

(a) prior to the date of execution of this lease or subsequent to January 31, 1990;

(b) if the purchase price of such unit of equipment as set forth in the Purchase Agreement, including any shipping charges and sales taxes to be included therein (such purchase price, including such charges and taxes, being hereinafter called the Cost) and of all units theretofore delivered shall exceed \$9,878,400; or

(c) if the conditions set forth for such delivery and acceptance in the Purchase Agreement shall not have

## Railroad Equipment Lease

been satisfied or waived.

### SECTION TWO TERM AND RENT

2.1. Term. This lease, with respect to any unit of the Equipment, will commence on the date of delivery and acceptance thereof and, unless this lease shall have been earlier terminated as herein provided, shall continue to January 30, 2000.

2.2. Rent. The Lessee agrees to pay to the Lessor or for the Lessor's account 41 consecutive rental payments on the thirtieth day of January, April, July, and October in each year commencing on January 30, 1990, and ending on January 30, 2000.

Each rental payment shall be in an amount equal to the Cost (as defined in section 1.3 hereof) of each unit of Equipment then subject to this lease multiplied by the percentage set forth in Schedule B hereto for the date such payment is due.

The Lessee agrees to make each payment provided for herein in accordance with the instructions of the Lessor or, if this lease shall have been assigned, the instructions of the assignee of the Lessor, in immediately available funds at or prior to 11:00 a.m. in the city where such payments are to be made. Payments of rent shall be made to a single payee at a single location, whether to the Lessor or to an assignee of the Lessor.

The Lessee promptly shall pay an amount equal to interest at an annual rate equal to the higher of 2% plus the rate of interest announced from time to time by Mellon Bank as its "prime rate" or 18% on any overdue rental payments and other obligations hereunder for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

2.3. Rent adjustment. The amount of each rent payment determined as set forth in the preceding section (together with Schedule B hereto) has been calculated on the assumption that 356 units of the Equipment will be settled for on December 15, 1989, that 35 units of the Equipment will be settled for on January 5, 1990, and that the cost to the Lessor for legal fees and expenses and appraisers' fees and expenses related to the preparation and negotiation of this lease, the Purchase Agreement, and the guaranty contemplated thereby shall be equal to \$30,000. If any of such assumptions prove to be incorrect or if there shall be a change in federal income tax law or federal income tax rates occurring prior to settlement for any unit of Equipment under section 3.2 of the Purchase Agreement, the amount of such rents shall be adjusted upward or downward to maintain the Lessor's

## Railroad Equipment Lease

after-tax yield and aggregate cash flow. Such adjustment shall be effected by a supplement hereto signed by both parties hereto, and approved by any assignee of the Lessor.

2.4. Net Lease. This lease is a net lease, and the Lessee agrees that its obligations hereunder, and the rights of the Lessor in and to payments due and to become due hereunder, are absolute and unconditional and are not subject to any abatement, reduction, set-off, defense, counterclaim, or recoupment for any reason whatever, any present or future law, rule or regulation to the contrary notwithstanding. The Lessee also agrees that, except as otherwise expressly provided herein, this lease will not terminate nor will the Lessee's obligations hereunder be affected for any reason whatever, it being the intention of the parties that all payments due and to become due hereunder are, and shall continue to be, payable in all events unless the obligation to pay the same is expressly terminated pursuant hereto. The Lessee shall bear all cost and expense of compliance with maintenance, insurance, and all other covenants and agreements of this Lease.

### SECTION THREE WARRANTIES

3.1. Disclaimer. THE LESSOR DISCLAIMS ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF ITS MATERIAL OR WORKMANSHIP OR ITS CONFORMITY TO THE SPECIFICATIONS OF ANY PURCHASE ORDERS RELATING THERETO. THE LESSOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE LESSEE AGREES TO LEASE THE EQUIPMENT AS IS.

### SECTION FOUR THE EQUIPMENT

4.1. Maintenance. The Lessee shall use the Equipment only for the service and in the manner for which it was designed, and shall keep and maintain the Equipment (a) in good operating order, repair, and condition, reasonable wear and tear excepted, (b) at a level of maintenance comparable to that used on all similar owned or leased equipment in the service of the Lessee, (c) in accordance with the specifications of the manufacturers of the Equipment and its component parts, (d) suitable for immediate regular use in main line service by a Class I line haul railroad, and (e) eligible for interchange in accordance with the interchange rules of the Association of American Railroads.

## Railroad Equipment Lease

4.2. Inspection. The Lessor shall have the right, at its own expense, by its agents, to inspect the Equipment and the operating and maintenance records of the Lessee pertaining to the Equipment at any reasonable time.

4.3. Compliance with Laws and Rules. The Lessee shall use and maintain the Equipment in compliance with all laws and government regulations, including the regulations of the Federal Railroad Administration, and all standards of the Association of American Railroads (or any successor national organization) applicable to the use, maintenance, and interchange of the Equipment, and shall make such alterations to the Equipment as may be required from time to time for such compliance, including any alteration requirement for which compliance has been deferred.

4.4. Hypothecation. EXCEPT AS SPECIFICALLY PERMITTED BY THIS SECTION, THE LESSEE SHALL NOT, WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE LESSOR, SELL, TRANSFER, ASSIGN, SUBLEASE OR OTHERWISE PART WITH POSSESSION OR CONTROL OF THE EQUIPMENT OR ANY PART THEREOF.

So long as no Event of Default or event that, with the passage of time or the giving of notice or both, would become an Event of Default, shall have occurred and be continuing, the Lessee may

- (i) deliver possession of the Equipment or any unit thereof to any maintenance facility for maintenance, repair, or overhaul, or for modification to the extent permitted hereby,

- (ii) subject the Equipment to normal interchange with other railroad companies under the rules of the Association of American Railroads,

- (iii) sublease the Equipment or any unit thereof to another railroad for periods not exceeding 180 days, or

- (iv) sublease the Equipment to any railroad owned or controlled by the Guarantor, or to any other railroad with the consent of the Lessor, which shall not be unreasonably withheld.

The term "railroad," as used in the foregoing clauses (iii) and (iv), shall mean a "railroad" as defined in section 101 of the Bankruptcy Code of the United States.

Any transfer of possession or sublease pursuant to this section shall be subject to the following conditions:

## Railroad Equipment Lease

(a) the terms of this lease shall continue to be observed and the Lessee shall continue to be primarily liable for the performance of its obligations hereunder;

(b) the identification numbers set forth in Schedule A hereto shall not be changed, unless appropriate statements or amendments shall have been recorded in accordance with section 4.8 hereof;

(c) the Lessee shall notify the Lessor prior to any sublease permitted by clause (iii) or (iv) of the second paragraph of this section 4.4, any such sublease shall not continue beyond the term of this lease and shall be expressly subject to termination upon occurrence of an Event of Default hereunder, the rights of any such sublessee shall be expressly subject and subordinate to the terms of this lease, and such sublessee shall comply with all the terms and conditions hereof, but shall not transfer possession of any unit of the Equipment except as permitted by clause (i) and (ii) of the second paragraph of this section 4.4; and

(d) any sublease permitted by clause (iii) or (iv) of the second paragraph of this section 4.4, for a period of more than 30 days (or, in the case of a sublease to a railroad owned or controlled by the Guarantor, 180 days), shall be recorded with the Interstate Commerce Commission pursuant to section 11303 of the Transportation Code, and upon request of the Lessor, shall be assigned to the Lessor and such assignment shall be recorded with the Interstate Commerce Commission as aforesaid, but the Lessee shall be entitled to collect and receive all rents under any such sublease unless an Event of Default or event that, with the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and shall be continuing.

4.5. Accessions and Improvements. All replacement parts installed in maintaining the Equipment or improvements or modifications required for compliance with section 4.3 hereof will be considered accessions and ownership thereof will, upon installation, automatically vest in the Lessor. The Lessee may make improvements or additions to the Equipment if such improvement is separately identifiable, will not impair the originally intended function of the Equipment, and is readily removable without material damage to the Equipment to which it is

## Railroad Equipment Lease

attached; such improvement or addition, unless necessary for compliance with section 4.3 hereof, shall remain the property of the Lessee. Any other improvement, addition, or modification shall be made only with the Lessor's prior consent, unless such improvement satisfies the conditions of section 4(4).03(B) of Revenue Procedure 75-21, as modified by Revenue Procedure 79-48, and is described in a least one of the subparagraphs of section 4(4).03(C) thereof; any such improvement, addition, or modification shall become an accession, as aforesaid.

4.6. Equipment Identification and Marking. The Lessee shall affix and maintain on each side of each unit of the Equipment (a) the reporting marks assigned to the Lessee by the Association of American Railroads, (b) the identification number set forth in Schedule A hereto for such unit, and (c) such other markings as from time to time may be required by law or deemed necessary by the Lessor to protect the ownership interest of the Lessor and the security interest of any assignee of the Lessor in the Equipment.

The Lessee shall not change its reporting marks or the identification number of any unit of the Equipment unless it shall have notified the Lessor of such change and shall have recorded appropriate statements or amendments, in accordance with section 4.8 hereof, to show for the public record such change in reporting marks or numbers.

4.7. Location of the Equipment. The Equipment shall not be used predominantly outside of the United States of America, or assigned for use in service involving any regular operation or maintenance outside of the United States of America.

4.8. Recordation and Filing. This Lease or a counterpart or copy hereof or evidence hereof may be filed or recorded in any public office as may be necessary or appropriate to protect the interest of the Lessor or any assignee of the Lessor herein or in the Equipment. The Lessee shall, at its own expense, file and record this lease, any assignments hereof, amendments hereto, and statements of new numbers required by section 4.6 hereof, pursuant to section 11303 of Title 49 of the United States Code, and shall execute and file any other instruments requested by the Lessor or such assignee that are necessary or appropriate to protect and preserve such interests.

4.9. Insurance. The Lessee shall maintain during the term of this lease and any period of storage thereafter (a) all risk property insurance for the Equipment in amounts and against risks customarily insured against by the Lessee on equipment similar to the Equipment owned or leased by the Lessee and (b) public liability insurance, in amounts and against risks customarily

## Railroad Equipment Lease

insured against by the Lessee on equipment similar to the Equipment owned or leased by the Lessee, but in no event in an amount less than \$50,000,000, with deductible provisions or self-insurance not exceeding \$3,000,000 per occurrence. If an Event of Default or event that, with the passage of time or the giving of notice or both, shall not have occurred hereunder, such maximum limit for deductible provisions or self-insurance shall be increased to \$6,500,000 for the calendar year 1991, and \$10,000,000 for the calendar year 1992 and thereafter.

All policies of insurance carried to meet the requirements of this section shall (a) be with a carrier or reputable standing, having a Best's rating of A or equivalent or be otherwise acceptable to the Lessor, (b) name the Lessor and any assignee of the Lessor as additional insured and loss payees, as their interests may appear, and (c) provide for not less than 30-days' prior notice to such parties in the event of cancellation, expiration, or material modification.

The Lessee shall furnish appropriate evidence of such insurance prior to the delivery and acceptance of the Equipment covered thereby. Thereafter, the Lessee shall deliver to the Lessor at least ten days prior to the expiration of each policy required to be maintained hereunder a certificate of the officer of the Lessee responsible for such insurance certifying that such policy has been renewed or replaced, and if replaced, specifying the particulars of the replacement policy and the carrier thereof, and certifying that such policy meets the requirements hereof. The Lessee shall also furnish to the Lessor, promptly after such renewal or replacement, a certificate of the Lessee's insurance broker or such insurance carrier specifying the particulars of such renewal or replacement policy.

4.10. Condition upon Return. Unless the Lessee shall have exercised the purchase option contemplated by section 10.2 hereof, upon the expiration or other termination of this lease, the Lessee shall assemble all the units of the Equipment at any single facility of the Lessee (selected by the Lessee) within 100 miles of Chicago, Illinois, and there store the Equipment for a period not to exceed 90 days after the date the last unit of the Equipment is delivered into storage in the condition required hereunder, and deliver the Equipment at any connecting point on the lines of the Lessee to a carrier for shipment at the instruction of the Lessor.

Upon termination of this lease, the Lessee shall deliver to the Lessor or any person designated by the Lessor all manuals, logs, and maintenance records for the Equipment.

Upon such return, the Equipment shall be in the condition

## Railroad Equipment Lease

required by sections 4.1, 4.3, and 4.11 hereof. Not less than 30 days prior to the expiration of this lease the Lessee shall notify the Lessor of the location to which the Equipment is to be delivered pursuant to this section. The Lessor or any person designated by the Lessor may there inspect the Equipment at its or their own expense, but the Lessee shall not be liable, except in the case of negligence or intentional acts, for any injury to any person exercising such right of inspection. If any unit of the Equipment is found not conforming to the requirements of this section, the Lessee shall make such repairs as are necessary for such conformance.

If any unit of the Equipment shall not be returned or shall not be in the condition required upon such return at the expiration or other termination of this lease, the Lessee shall pay to the Lessor daily rent for each day from the expiration of this lease to the date such unit is returned or restored to the condition required, as the case may be (or payment made in respect of any such unit deemed to have suffered an Event of Loss in accordance with section 6.2 hereof). Such daily rent shall be the fair market rental rate at such time, shall be determined in accordance with the procedure set forth in Section Ten hereof, and shall be not less than the amounts paid by railroad companies to other railroad companies or private car lines for the use of equipment of the same type as the Equipment. If less than five per cent of the units of the Equipment then subject to this lease shall be subject to the aforesaid requirement for payment of daily rent, then such fair market rental rate shall be deemed to be the then prevailing per diem interchange rate paid by railroad companies to other railroad companies for the use of equipment of the same type as the Equipment.

The Lessee acknowledges that the Lessor contemplates rebuilding the Equipment at the termination of this lease in a manner that will establish a new date of building or rebuilding for the purposes of the system of car hire charges promulgated for interchange service by the Association of American Railroads, and that late return of any unit of the Equipment may make impractical such rebuilding. Accordingly, if any unit of the Equipment shall not be delivered into storage in the condition required upon such return within 30 days after the termination of this lease, the Lessee shall pay to the Lessor daily rent for each day after such 30th day to the date such unit is so returned in such condition at a rate equal to three times the rate established in the preceding paragraph.

4.11. Encumbrances. The Lessee shall not create or permit to exist any claims, liens, security interests, or other encumbrances of any nature upon or against the Equipment or any part thereof, including replacement parts (except pursuant to any



## Railroad Equipment Lease

assignment of this lease by the Lessor and any encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Equipment), and the Lessee shall take such action at its own expense as may be necessary to duly discharge any such encumbrance.

### SECTION FIVE COVENANTS

5.1. Reports. The Lessee shall furnish to the Lessor:

(a) within 120 days after the close of each fiscal year of the Lessee occurring after the date hereof, a balance sheet and statement of cash flow of the Lessee at and as of the end of such fiscal year, together with a statement of income of the Lessee for such fiscal year;

(b) within 45 days after the close of each of the first three quarters of each fiscal year of the Lessee occurring after the date hereof, a balance sheet and statement of cash flow of the Lessee at and as of the end of such quarter, together with a statement of income of the Lessee for such quarter;

(c) promptly upon their availability and to the extent prepared, all regular and periodic reports of the Lessee to the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or any successor statute;

(d) promptly upon their availability and to the extent prepared, all regular and periodic reports to the Interstate Commerce Commission on form R-1 or any successor form;

(e) within the period set forth in (a) above, a certificate of an officer of the Lessee stating that he has reviewed the activities of the Lessee and that, to the best of his knowledge, there exists no default or Event of Default (as defined in section 8.1 hereof); and

(f) from time to time, such other information regarding the Equipment or this lease as the Lessor shall reasonably request.

5.2. Waiver. The Lessee hereby waives and releases any claim against the Lessor or its successors or assigns arising out of or

## Railroad Equipment Lease

connected with the ownership, leasing, possession, use, operation, or condition of the Equipment.

5.3. Quiet Possession. If and so long as the Lessee keeps and performs each and every covenant and agreement to be performed and observed by it hereunder, the Lessee shall be entitled to the use and possession of the Equipment according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

5.4. Maintenance of Status as a Railroad. The Lessee shall not take any action that would result in the loss by the Lessee of the status a "railroad" as defined in section 101 of the United States Bankruptcy Code, it being the intention of the parties hereto that the Lessor shall have the rights of a lessor under section 1168 of said code.

5.5. Merger. Without the consent of the Lessor first obtained, the Lessee shall not consolidate with or merge into any other corporation, or convey, transfer, lease, or assign substantially all of its assets to any entity, unless

(a) such successor corporation or entity or transferee shall expressly assume the obligations of the Lessee hereunder and under the Purchase Agreement, and after such consolidation, merger, or transfer, no Event of Default shall have occurred hereunder;

(b) such successor corporation or entity or transferee shall be a "railroad" as defined in section 101 of the United States Bankruptcy Code;

(c) if such successor corporation or entity or transferee shall not be the Lessee, or the name of the Lessee shall be changed, an appropriate statement of such change in identity or name of the Lessee shall have been filed and recorded in every public office where this lease or evidence thereof has been filed or recorded, in accordance with section 4.8 hereof; and

(d) if such successor corporation or entity or transferee shall not be the Lessee, the Guarantor shall confirm that the guaranty contemplated by the Purchase Agreement guarantees the obligations of such successor or transferee, or shall guarantee the obligations of such successor or transferee by an instrument of the same scope and tenor as the guaranty contemplated by the Purchase Agreement.

## Railroad Equipment Lease

### SECTION SIX LOSS OR DESTRUCTION

6.1. Risk of Loss. The Lessee bears the entire risk of loss of or damage to the Equipment from the time the Lessor shall have become obliged to purchase the Equipment pursuant to the provisions of Section One hereof, through the term of this lease and the period of storage specified in section 4.10 hereof, until the Equipment leaves the lines of the Lessee after the termination of this lease or the Lessor or a party designated by the Lessor shall have recovered possession of the Equipment, whichever occurs first.

6.2. Casualty Value Payments. If any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, rendered permanently unfit for the intended use, or irreparably damaged, from any cause whatsoever, returned to the manufacturer pursuant to any patent indemnity or warranty settlement, or taken or requisitioned by condemnation or otherwise by any government agency resulting in loss of possession by the Lessee for a period of 90 consecutive days (any such occurrence being herein called an Event of Loss), prior to the return of such unit to the Lessor, the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice (unless such payment date occurs within 30 days of such Event of Loss, in which case the next following rental payment date) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments then due in respect of such unit plus an amount (herein called the Casualty Value) equal to the percentage of the Cost of such unit set forth in Schedule C hereto for the date of such payment. If such Event of Loss occurs within 30 days of the expiration of this lease, or thereafter, such payment shall be made within 30 days of the occurrence of such Event of Loss.

Upon the making of such payment by the Lessee in respect of any unit, the rent for such unit shall cease to accrue, this lease shall terminate with respect to such unit, and (except in the case of the loss, theft, complete destruction, or the return to the manufacturer of such unit) the Lessee shall be entitled to any salvage from such unit.

### SECTION SEVEN INDEMNITIES

7.1. General Indemnity. The Lessee shall indemnify and hold the Lessor, any assignee of the Lessor, and their respective agents and employees harmless from and against any and all liabilities, losses, damages, injuries, penalties, claims,

## Railroad Equipment Lease

demands, actions, suits, costs, and expenses, including reasonable attorney's fees, and including but not limited to any of the foregoing arising out of or imposed by the doctrine of strict liability or any statute imposing liability on owners of property, or arising out of the manufacture, ordering, purchase, acceptance, lease, possession, or operation by the Lessee or any other entity, the condition, return, or use of the Equipment, or by operation of law, except any of the foregoing as may arise due to the wilful misconduct or gross negligence of the party seeking indemnity. The wilful misconduct or gross negligence of any party indemnified hereunder shall not affect the rights of any other party entitled to indemnity. The Lessee agrees that upon notice by any party entitled to indemnity hereunder of the assertion of any such liability, loss, damage, injury, penalty, claim, demand, action, or suit, the Lessee shall assume full responsibility for the defense thereof.

The Lessee shall be subrogated to the rights of any indemnified party in respect of the matter for which the indemnity has been given.

7.2. Taxes. The Lessee shall pay and discharge and hold the Lessor and any assignee of the Lessor harmless from and against all assessments and all taxes (including without limitation all sales, use, rental, and property taxes) and similar charges of any nature whatsoever, together with any penalties, fines, or interest thereon that may now or hereafter be imposed upon the purchase, delivery, ownership, leasing, maintenance, possession, or use of the Equipment, or upon this lease, any assignment hereof, or the other documents contemplated hereby or thereby, or the rent payments or other amounts due or to become due hereunder or thereunder, excluding, however, all income, franchise, capital, or other taxes, on or measured by the net income of the Lessor, imposed by:

(i) the United States,

(ii) the jurisdiction in which the principal office of the Lessor is located, or

(iii) any other jurisdiction in which the Lessor may be subject to such tax, but only to the extent that (a) the income of the Lessor attributable to this lease is not subject to tax in the jurisdiction in which the principal office of the Lessor is located, and (b) the amount of tax payable by the Lessor to such other jurisdiction does not exceed the amount of tax, if any, that would be payable to the jurisdiction in which the principal office of the Lessor is located if that income were subject to tax in that jurisdiction.

## Railroad Equipment Lease

In case any report or return is required to be made with respect to any obligation of the Lessee under this section, the Lessee shall either (a) after notice to the Lessor make such report or return to show the ownership of the Equipment in the Lessor and shall send a copy of such report or return to the Lessor or (b) notify the Lessor of such requirement and prepare and furnish such report or return for filing by the Lessor in such manner as shall be satisfactory to the Lessor.

The Lessee shall be under no obligation to pay any such taxes so long as it is contesting in good faith and by appropriate legal or administrative proceedings such taxes and the nonpayment thereof does not adversely affect the title, property, or rights of the Lessor hereunder. The Lessee shall give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest.

7.3. Income Taxes. The Lessor and the Lessee agree that they will treat this Lease as a "lease" for Federal income tax purposes, pursuant to which the Lessor is the owner and lessor of the Equipment, and the Lessee is the lessee of the Equipment. The Lessee agrees that it will take no action or omit to take any action inconsistent with the foregoing.

The Lessor expects to be entitled to claim the tax benefits of equipment ownership (hereinafter called Tax Benefits) for each unit of Equipment available (a) as cost recovery deductions under section 168 of the Internal Revenue Code of 1986, as amended to the date hereof (hereinafter called the Code) for each unit of Equipment using (i) the 150 percent declining balance method, switching to the straight line method in the first year such method will yield a larger allowance, a recovery period of 12 years, and the half-year convention for the first \$9000 of the Cost of each such unit, and (ii) the 200 percent declining balance method, switching to the straight line method in the first year such method will yield a larger allowance, a recovery period of 7 years, and the half-year convention, and (b) as depreciation, cost recovery, or similar deductions under the laws of the state in which the Lessor is domiciled. The Lessor does not expect to include in its gross income for Federal or state income tax purposes any amount attributable to any alterations, modifications or additions made by the Lessee to the Equipment during the term of this lease.

The Lessee represents and warrants that at the time each unit of Equipment becomes subject to this Lease, the Cost of each unit of Equipment will not exceed the fair market value thereof

## Railroad Equipment Lease

and no unit of the Equipment will require any improvements, modifications or additions (other than ancillary items of equipment of a kind that are customarily furnished by purchasers or lessees of property identical to the Equipment) in order for such Equipment to be rendered complete for its intended use by Lessee.

The Lessee covenants and agrees that

(a) during the term of this lease, the Lessee will not at any time use, permit the use of, or fail to use any item of Equipment so as to disqualify the rebuilt portion thereof as "7-year property" within the meaning of section 168 of the Code, and

(b) the Lessee will take no action inconsistent with the assumptions recited in the second paragraph of this section 7.3 concerning alterations, modifications or additions to the Equipment, or which would result in the loss, disallowance, recapture, or unavailability to the Lessor of the Tax Benefits.

If

(a) by reason of any act or omission of the Lessee (except any act that the Lessee is required to take or omit under this lease), the inaccuracy or incorrectness of any representation or warranty made by the Lessee in this section 7.3, or the breach of any covenant or agreement of the Lessee in this lease, the Lessor shall not have, or shall lose the right to claim, or if there shall be disallowed or recaptured with respect to Lessor, all or any portion of the Tax Benefits for a unit of Equipment, or

(b) the Lessor shall be required to include in its gross income any amount attributable to any alterations, modifications or additions made by Lessee to any unit of Equipment prior to the expiration of the term of this lease,

(any of the foregoing being hereinafter called a Loss), then the Lessee shall pay to the Lessor as an indemnity an amount that, after deduction of the net amount of all additional Federal, state and local income taxes required to be paid by the Lessor in respect of the receipt of such amount (assuming, for this purpose, that the Lessor is subject to the maximum marginal rate of taxation applicable to corporations at such time as such amount becomes due) shall be sufficient to preserve the after-tax yield and after-tax aggregate cash flow anticipated by the Lessor

## Railroad Equipment Lease

at the commencement of this lease, plus the net amount of any actual interest, penalties or additions to tax payable to such Federal, state or local government as a result of such Loss.

At the request and expense of the Lessee, the Lessor shall request its independent public accountants to verify the amount due from the Lessee pursuant to the preceding paragraph. Such verification shall be provided to the Lessee within 30 days of the Lessee's request to the Lessor.

For purposes of this section 7.3, a Loss shall occur upon the earlier of (a) the happening of an event (such as disposition or change in use of any unit of Equipment) that causes such Loss, (b) the payment by the Lessor to the Internal Revenue Service of the tax increase resulting from such Loss, or (c) the receipt of advice by the Lessor from its independent tax counsel that there is not a reasonable basis for an opinion contrary to the view that (i) the Lessor is not entitled to all or any portion of the Tax Benefits, or (ii) the Lessor is required to include an amount in its gross income prior to the end of the term of this lease as a result of alterations, modifications or additions made by the Lessee to the Equipment.

7.4. Contest. If a claim shall be made by the Internal Revenue Service with respect to a Loss for which the Lessee may be required to indemnify the Lessor under section 7.3 hereof, the Lessor shall promptly notify the Lessee of such claim and shall not make payment of the tax claimed for at least thirty days after the giving of such notice. In addition, the Lessor shall give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of Lessor. If the indemnity payment due the Lessor pursuant to section 7.3 hereof is in excess of \$200,000, and if the Lessee desires that the Lessor contest such claim, the Lessee shall within thirty days after notice by the Lessor of such claim (i) request that such claim be contested; (ii) furnish to the Lessor an opinion of independent tax counsel, selected by the Lessor and reasonably satisfactory to the Lessee, to the effect that there is a reasonable basis in law and fact for successfully contesting the proposed adjustments; and (iii) agree to pay the Lessor on demand all reasonable costs and expenses (including reasonable attorneys' and accountants' fees and disbursements) in connection with such contest. Thereupon, the Lessor shall consult with the Lessee and shall take all reasonable legal or other action requested by the Lessee in contesting such claim, provided that the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or appropriate state agency in respect of such claims (other than any such administrative procedures which are required in order to prosecute such contest

## Railroad Equipment Lease

in either of the courts referred to below), and may either pay the tax claimed and sue for a refund in the appropriate state court or United States District Court or the United States Claims Court, as the Lessor may elect, or contest such claim in the appropriate state court or the Tax Court of the United States. The Lessor agrees to consult with and to consider in good faith suggestions made by the Lessee concerning the appropriate forum in which to proceed. If the Lessee makes a timely written request, the Lessor shall appeal any adverse decision of any court of original jurisdiction, provided that the Lessee's written request is accompanied by an opinion of independent tax counsel, selected by the Lessor and reasonably satisfactory to the Lessee, to the effect that, taking into account the relevant facts and law (including the reasoning of the court below), it is more likely than not that the Lessor will prevail in such appeal. The Lessor shall not be required to appeal any decision beyond the first appellate level.

### SECTION EIGHT DEFAULTS AND REMEDIES

8.1. Events of Default. In case any of the following events (any such event being herein called an Event of Default) shall occur (whatever the reason for such event and whether it shall be voluntary or involuntary):

(a) the Lessee shall fail to make any payment due hereunder within five business days after the same shall have become due;

(b) the Lessee or the Guarantor shall fail to perform or observe any covenant, condition, or agreement under this lease or the Purchase Agreement, or any agreement, document, or certificate delivered by the Lessee or the Guarantor in connection herewith, and such failure shall continue for 30 days after written notice thereof from the Lessor to the Lessee;

(c) any representation or warranty made by the Lessee in this lease (except in section 7.3 hereof) or by the Lessee or the Guarantor in the Purchase Agreement or in any agreement, document, or certificate delivered by the Lessee or the Guarantor in connection herewith or therewith shall prove to have been incorrect in any material respect when made or given;

(d) the Lessee shall attempt to remove, sell, transfer, encumber, part with possession of, assign, or sublet the Equipment or any part or unit thereof (except as



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expressly permitted hereunder), or the Lessee shall fail to maintain in force any material coverage of any policy of insurance required to be maintained hereunder;

(e) either the Lessee or the Guarantor shall (1) be generally not paying its current material obligations as they become due (other than those subject to bona fide disputes), (2) file, or consent to the filing against it of a petition for relief under any bankruptcy or insolvency laws, (3) make an assignment for the benefit of creditors, (4) consent to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over the Lessee or the Guarantor or a substantial part of its property, or (5) take corporate action for the purpose of any of the foregoing; or

(f) a court having jurisdiction over the Lessee or the Guarantor or the property of either of them shall enter a decree or order in respect of the Lessee, the Guarantor, or such property in an involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or official with similar powers over the Lessee or the Guarantor or a substantial part of such property, or shall order the winding-up or liquidation of the affairs of the Lessee or the Guarantor, and such order or decree shall continue in effect for a period of 60 consecutive days;

then the Lessor may, at its option, declare this lease to be in default by written notice to such effect given to the Lessee.

8.2. Remedies. At any time after the Lessor shall have declared this lease to be in default, the Lessor may:

(a) proceed by appropriate court action, at law or in equity, to enforce performance by the Lessee of the applicable covenants and agreements of this lease or to recover damages for the breach thereof; and

(b) by notice in writing terminate this lease, whereupon all rights of the Lessee to the use of the Equipment shall absolutely cease and terminate but the Lessee shall remain liable as herein provided; and thereupon the Lessee, if so requested by the Lessor, shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads

## Railroad Equipment Lease

having possession of any unit of the Equipment to return the Equipment promptly to the Lessee, and the Lessee shall promptly transport the Equipment to the location specified in section 4.10 hereof, and there store the Equipment until disposition in accordance with section 8.4 hereof at the direction of the Lessor and return the Equipment to the possession of the Lessor in the condition required by, and as more fully set forth in, section 4.10 of this lease, or the Lessor may, by its agents, enter upon the premises where the Equipment is located and take immediate possession of and remove the same, and may use and employ in connection with such removal any services, aids, equipment, trackage, and other facilities of the Lessee.

The obligation to return the Equipment to the possession of the Lessor is of the essence of this lease, and the Lessor shall be entitled to a judgment conferring upon the Lessor the immediate right to such possession and to a decree of specific performance requiring the return of the Equipment.

8.3. Damages. The Lessee shall be liable for all damages, costs, charges, and expenses, including reasonable attorneys' fees and disbursements, incurred by the Lessor because of the occurrence of any Event of Default or the exercise of the Lessor's rights with respect thereto.

When the Lessor shall have terminated this lease pursuant to clause (b) of Section 8.2, the Lessee shall pay to the Lessor without further demand the following amounts:

(a) the amount of rental payment accrued and unpaid to the date the Equipment is surrendered to the Lessor as hereinabove provided, including any amounts payable pursuant to the last paragraph of section 4.10 hereof in respect of units of the Equipment returned late or not in the required condition, and the amount of any indemnity or other payments due hereunder;

(b) an amount equal to the Casualty Value of the Equipment, determined as of the date of such surrender, which amount, because of the difficulty or impossibility of determining actual damages, the parties have agreed as the reasonable, fixed, and liquidated damages the Lessor is entitled to receive in lieu of actual damages (and not as a penalty) for loss of bargain and non-payment of rent after the surrender of the Equipment to the Lessor;

## Railroad Equipment Lease

(c) any damages and reasonable expenses that the Lessor shall have sustained because of the breach of any obligation or the occurrence of an Event of Default under this lease, other than for payment of rent; and

(d) such other expenses as shall be expended or incurred in the seizure, storage, rental or sale of the Equipment or in the enforcement of any right or privilege hereunder.

8.4. Mitigation of Damages. The Lessor may retain the use of the Equipment upon recovery of possession thereof, or with or without recovering possession of the Equipment the Lessor may sell or lease the Equipment or any unit thereof in a commercially reasonable manner. If any unit of the Equipment shall be sold or leased, the Lessee shall be entitled, in mitigation of the damages set forth in clause (b) of section 8.3 hereof, to the net proceeds of such sale or the net present value of the contractual rentals under any new lease (discounted at the interest rate that the lessee under such new lease could borrow funds on a secured basis for a term equivalent to the term of the new lease), as the case may be, after deduction from such proceeds or present value of all costs, charges, and expenses incurred by the Lessor in the exercise of its remedies hereunder, up to the amount of the Casualty Value of such unit, if the Lessee shall have theretofore paid the full amount of such Casualty Value. If the Lessor shall elect to retain any unit of Equipment, the Lessee shall be entitled, in mitigation as aforesaid, to a credit against the amount of Casualty Value due or paid in respect of such unit in an amount equal to the fair market value of such unit, determined in accordance with the procedures set forth in Section Ten hereof, less the amount of all costs, charges, and expenses of the Lessor, as aforesaid.

8.5. Remedies Not Exclusive; No Waiver. No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any default or Event of Default hereunder shall be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of the Lessor in exercising any right hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation of such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

8.6. Bankruptcy. This lease has been entered into by the

## Railroad Equipment Lease

Lessor as a financial accommodation to the Lessee based on the Lessee's undertakings to perform its obligations hereunder and the assessment of the Lessor as to the ability of the Lessee so to perform. Accordingly, if the Lessee shall become a debtor in a case under Title 11 of the United States Code or any successor statute on the subject of bankruptcies, the Lessor does not accept performance of the Lessee's obligations hereunder by the trustee of the estate of the Lessee, or by any assignee or delegatee of the Lessee or such trustee, and reserves its right to terminate this lease and recover possession of the Equipment. Notwithstanding the foregoing, and without prejudice thereto, the parties hereto agree that (a) "adequate assurance of future performance," for the purpose of section 365 of said Title, shall include, without limitation, a guaranty or surety bond for all obligations of the Lessee for the balance of the lease term from a third party with tangible net worth and ratio of tangible net worth to debt of not less than the tangible net worth and such ratio, respectively, of the Guarantor at the time of the execution of this lease; and (b) the Lessor shall be entitled to all proceeds from any assignment of this lease.

### SECTION NINE ASSIGNMENTS

9.1. Assignments; Indemnified Parties. This lease, including all agreements, covenants, indemnities, representations, and warranties, shall be binding upon and inure to the benefit of, and may be enforced by, (a) the Lessor and its successors, assigns, agents, employees, and representatives; and (b) the Lessee and its successors and, to the extent permitted hereby, assigns.

9.2. Rights of Lessor's Assignee. The Lessor may sell or assign all or part of its right, title, and interest in and to this lease and the Equipment covered hereby to a financial institution, or the Lessor or any assignee thereof may assign this lease and grant a security interest in the equipment to a financial institution as security for any obligation. The Lessee consents to any such assignment, and agrees that

(a) except as set forth in any instrument of such assignment furnished to the Lessee by the Lessor or such assignee, such assignee or its successor assignee shall be entitled to the benefits of all covenants and obligations of the Lessee hereunder as if originally named as lessor herein, all rights of the Lessor hereunder shall be exercisable by such assignee and its successor assignees, all consents or approvals required to be given hereunder by the Lessor shall be given (or

## Railroad Equipment Lease

declined) by such assignee or successors, and such assignee or such successors shall receive all notices and reports required to be given to the Lessor hereunder;

(b) the rights of such assignee and such successors shall not be subject to any defense, counterclaim, or set-off that the Lessee may have or assert against the Lessor; and

(c) such assignee and any successor assignees shall not be or become liable for any obligation of the Lessor or otherwise.

9.3. Assignment by the Lessee. Without the consent of the Lessor first obtained, THE LESSEE SHALL NOT ASSIGN, TRANSFER OR CONVEY ITS LEASEHOLD INTEREST IN THE EQUIPMENT OR ITS RIGHTS AS LESSEE HEREUNDER except as specifically permitted by section 4.4 or 5.5 hereof.

### SECTION TEN END-OF-TERM OPTIONS

10.1. Renewal Option. Unless an Event of Default or event that, with the passage of time or the giving of notice or both, would become an Event of Default, shall have occurred and shall be continuing, the Lessee, by 180-days' written notice to the Lessor, may elect to extend the original term of this lease with respect to not less than all of the Equipment then subject to this lease for an additional two, three, or four-year period commencing on the scheduled expiration of the original term of this lease.

The provisions of this lease shall be applicable to any such renewal term, and the rental payments shall be made on the anniversaries of the dates set forth in section 2.2 hereof for rental payments during the original term of this lease, but such rental payments shall be in the following percentages of the average rent during the term of this lease after February 1, 1990:

<u>Renewal period</u>	<u>Percentage</u>
Two years	75%
Three years	55
Four years	50

10.2. Purchase Option. Unless an Event of Default or event

## Railroad Equipment Lease

that, with the passage of time or the giving of notice or both, would become an Event of Default, shall have occurred and shall be continuing, the Lessee, by 180-days' written notice to the Lessor, may elect to purchase not less than all of the Equipment at the end of the original term (or any extended term) for a purchase price equal to the fair market value thereof.

Such fair market value shall be determined as of the time of the exercise of the purchase option and shall be equal to the amount that would obtain in an arms'-length transaction between an informed and willing buyer (other than a buyer in possession), as the case may be, and an informed and willing owner under no compulsion to sell, and in such determination, the costs of removal from the location of current use shall not be a deduction from such value.

The parties hereto agree that 38% of the Cost of the Equipment represents a reasonable estimate of such fair market value, and such amount shall be the purchase price unless the Lessee, in its notice of exercise of the purchase option, requests a new determination of such fair market value. If the Lessee and the Lessor are unable to agree on such fair market value before 120 days from the expiration of the term of this lease, such value shall be determined by an appraiser selected by the Lessee and the Lessor, or if such parties cannot agree on a single appraiser before 90 days from the expiration of the term of this lease, by two appraisers, one selected by each party. If the two appraisers cannot agree on a value before 60 days from the expiration of this lease, then they shall select a third appraiser, and the parties shall be bound by the decision of the third appraiser. If such third appraiser shall not be appointed or does not provide an appraisal before 30 days from the expiration of this lease, then American Appraisal Company (or its successor) shall be engaged to provide the appraisal, and the parties shall be bound by its appraisal.

The costs of the appraisal contemplated by this section shall be borne by the Lessee, except that the Lessor shall pay the fees and expenses of any appraiser selected by it, and the parties shall share equally the fees and expenses of any third appraiser, should such be necessary.

## SECTION ELEVEN MISCELLANEOUS

11.1. Mailing of Notice. All communications and notices provided for herein shall be in writing and shall become effective when delivered or the day after being deposited in the United States mail, with proper postage for overnight mail

## Railroad Equipment Lease

prepaid, addressed:

- (a) if to the Lessor, in care of  
Mellon Financial Services--Leasing Group  
Suite 1111  
One Mellon Bank Center  
Pittsburgh, Pennsylvania 15258
- (b) if to the Lessee, at  
135 Jamison Lane  
Monroeville, Pennsylvania 15146  
Attention of Vice President--Finance

or such other address that either party shall designate by notice to the other.

11.2. Indemnity for Lessor's Performance. If the Lessee shall fail to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the Lessee shall pay to the Lessor, upon demand, the amount of the reasonable costs and expenses incurred by the Lessor in connection with such performance or compliance, together with interest on such amount at the rate per annum set forth in section 2.2 hereof for overdue payments of rent.

11.3. Covenants to Survive. All covenants, agreements, indemnities, representations, and warranties contained in this lease or any document, agreement, or certificate delivered pursuant hereto shall survive the expiration or other termination of this lease.

11.4. Handling of Communications Regarding Equipment. The Lessee shall furnish, promptly upon receipt thereof, copies of communications or notices from the manufacturer of the Equipment or any government agency with jurisdiction over the Equipment regarding any material matter with respect to the use or modification of the Equipment.

11.5. Amendments and Waivers. The terms of this lease shall not be waived, altered, modified, amended, supplemented, or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

11.6. Enforceability and Severability. Any provision of this lease that may be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or

## Railroad Equipment Lease

render unenforceable such provision in any other jurisdiction. To the extent permitted by law, the provisions of this lease shall prevail over any inconsistent provision of law, and to such extent, the Lessee hereby waives any provision of law inconsistent with the express terms hereof.

11.7. Law Governing. This lease shall be governed by, and construed in accordance with, the law of the Commonwealth of Pennsylvania, but the parties shall have all rights under section 11303 of the United States Transportation Code.

11.8. Recourse. This lease is solely a corporate obligation of the Lessee and the Lessor and no recourse shall be had in respect of any obligation, covenant, or agreement of this lease, or referred to herein, against any stockholder, incorporator, director, or officer, as such, past, present, and future, of the parties hereto by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of statute or otherwise.

11.9. Intention of the Parties. This lease shall be construed as an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title, or interest in or to the Equipment, except as lessee only. The parties hereto intend that this lease shall be treated as a "finance lease" under Article 2A of the Uniform Commercial Code. This agreement and the other agreements and documents referred to herein constitute the final and entire expression of the agreement of the parties regarding to the matters contemplated hereby.

11.10. Counterparts. This lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which together shall constitute a single agreement, but the counterpart or counterpart set delivered to the assignee of the Lessor shall be and be marked the "Original" and all other counterparts hereof shall be and be marked "Duplicate." No security interest or other right in this lease can be created by the transfer or possession of any counterpart or counterpart set other than the "Original," but any "Duplicate" counterpart or counterpart set shall be valid evidence of this lease for any other purpose.

11.11. Effectiveness. Although this lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth in the notaries' acknowledgments thereof, and this lease shall be effective on the latest of such dates.



Railroad Equipment Lease

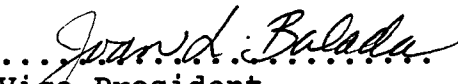
IN WITNESS WHEREOF, the parties hereto have each caused this lease to be duly executed by their respective officers thereunto duly authorized:

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

by  Vice President - OPERATIONS



MELLON FINANCIAL SERVICES CORPORATION #3

by  Vice President

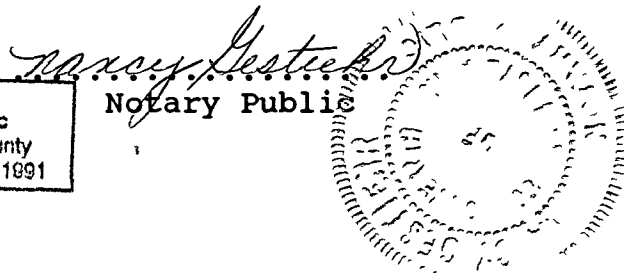
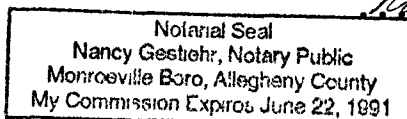


Railroad Equipment Lease

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.:  
COUNTY OF ALLEGHENY )

On this 13<sup>th</sup> day of December, 1989, before me personally appeared *M R SEIPLER*, to me personally known, who, by me being duly sworn, says that he is a Vice President of Elgin, Joliet & Eastern Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, and that said instrument was signed and sealed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

My commission expires



COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.:  
COUNTY OF ALLEGHENY )

On this            day of December, 1989, before me personally appeared           , to me personally known, who, by me being duly sworn, says that he is a Vice President of Mellon Financial Services Corporation #3, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

My commission expires

Railroad Equipment Lease

SCHEDULE A

EQUIPMENT

391 100-ton gondola cars, Association of American Railroads mechanical designation GB, manufactured by Pullman Incorporated (Pullman-Standard division), and bearing the marks of the Elgin, Joliet, & Eastern Railway Company and the identifying numbers

EJ&E 88500 through 88554  
EJ&E 88556 through 88577  
EJ&E 88579 through 88633  
EJ&E 88635 through 88638  
EJ&E 88640 through 88645  
EJ&E 88647 through 88687  
EJ&E 88689 through 88700  
EJ&E 88702 through 88768  
EJ&E 88770 through 88883, and  
EJ&E 88885 through 88899.

# Railroad Equipment Lease

## SCHEDULE B

### RENT

<u>Payment Date</u>	<u>Percentage of Equipment Cost</u>
1 / 30 / 1990	1.689136
4 / 30 / 1990	1.500000
7 / 30 / 1990	1.500000
10 / 30 / 1990	1.500000
1 / 30 / 1991	8.165669
4 / 30 / 1991	1.500000
7 / 30 / 1991	1.500000
10 / 30 / 1991	1.500000
1 / 30 / 1992	8.165669
4 / 30 / 1992	1.500000
7 / 30 / 1992	1.500000
10 / 30 / 1992	1.500000
1 / 30 / 1993	8.165669
4 / 30 / 1993	1.500000
7 / 30 / 1993	1.500000
10 / 30 / 1993	1.500000
1 / 30 / 1994	8.165669
4 / 30 / 1994	1.500000
7 / 30 / 1994	1.500000
10 / 30 / 1994	1.500000
1 / 30 / 1995	8.165669
4 / 30 / 1995	1.500000
7 / 30 / 1995	1.500000
10 / 30 / 1995	1.500000
1 / 30 / 1996	10.980263
4 / 30 / 1996	1.500000
7 / 30 / 1996	1.500000
10 / 30 / 1996	1.500000
1 / 30 / 1997	10.980263
4 / 30 / 1997	1.500000
7 / 30 / 1997	1.500000
10 / 30 / 1997	1.500000
1 / 30 / 1998	10.980263
4 / 30 / 1998	1.500000
7 / 30 / 1998	1.500000
10 / 30 / 1998	1.500000
1 / 30 / 1999	10.980263
4 / 30 / 1999	1.500000
7 / 30 / 1999	1.500000
10 / 30 / 1999	1.500000
1 / 30 / 2000	10.980263

Railroad Equipment Lease

SCHEDULE C  
CASUALTY VALUES

<u>Payment Date</u>	<u>Percentage of Equipment Cost</u>
1 / 30 / 90	102.119737
4 / 30 / 90	102.977729
7 / 30 / 90	103.779420
10 / 30 / 90	104.551267
1 / 30 / 91	100.498820
4 / 30 / 91	101.073134
7 / 30 / 91	101.633358
10 / 30 / 91	102.920647
1 / 30 / 92	97.639051
4 / 30 / 92	98.634123
7 / 30 / 92	99.559189
10 / 30 / 92	100.473444
1 / 30 / 93	94.718451
4 / 30 / 93	95.465132
7 / 30 / 93	96.222201
10 / 30 / 93	96.972023
1 / 30 / 94	91.056231
4 / 30 / 94	91.644859
7 / 30 / 94	92.241857
10 / 30 / 94	92.829552
1 / 30 / 95	86.749535
4 / 30 / 95	87.171638
7 / 30 / 95	87.598938
10 / 30 / 95	88.013700
1 / 30 / 96	78.946002
4 / 30 / 96	79.127715
7 / 30 / 96	79.323830
10 / 30 / 96	79.509259
1 / 30 / 97	70.214115
4 / 30 / 97	70.170408
7 / 30 / 97	70.143687
10 / 30 / 97	70.108913

Railroad Equipment Lease

SCHEDULE C (continued)

CASUALTY VALUES

<u>Payment Date</u>	<u>Percentage of Equipment Cost</u>
1 / 30 / 98	60.596252
4 / 30 / 98	60.336720
7 / 30 / 98	60.090625
10 / 30 / 98	59.832861
1 / 30 / 99	50.093523
4 / 30 / 99	49.603453
7 / 30 / 99	49.122368
10 / 30 / 99	48.625075
1 / 30 / 00	38.641581
4 / 30 / 00	37.643819
7 / 30 / 00	36.644615
10 / 30 / 00	35.619268
1 / 30 / 01	34.567273
4 / 30 / 01	33.488631
7 / 30 / 01	32.385429
10 / 30 / 01	31.257194
1 / 30 / 02	30.103441
4 / 30 / 02	28.924244
7 / 30 / 02	27.721963
10 / 30 / 02	26.496152
1 / 30 / 03	25.246357
4 / 30 / 03	23.972165
7 / 30 / 03	22.673360
10 / 30 / 03	21.349466
1 / 30 / 04	20.000000

Railroad Equipment Lease

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

Elgin, Joliet & Eastern Railway Company does hereby certify that:

1. Pursuant to the Railroad Equipment Lease dated as of November 15, 1989 (hereinafter called the Lease), between this company and Mellon Financial Services Corporation #3 (hereinafter called the Lessor), the equipment described below has been accepted by this corporation on the dates set forth below (a) as agent for the Lessor pursuant to section 1.2 of the Lease, and (b) on its own behalf as lessee of such equipment under the Lease.

<u>Quantity</u>	<u>Description</u>	<u>Identifying Numbers</u>	<u>Acceptance Date</u>
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2. No Event of Default, as such term is defined in the Lease, or event that, with the passage of time or the giving of notice or both, would constitute such an Event of Default, has occurred and is continuing.

3. The representations and warranties made in the Equipment Purchase and Lease Financing Agreement dated as of November 15, 1989, among this company, Transtar, Inc., and the Lessor, and in the certificates heretofore delivered pursuant thereto remain true and correct as if made on the date hereof.

IN WITNESS WHEREOF, the undersigned corporation has caused this certificate to be executed by its duly authorized officer, on this            day of            , 19    .

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

by .....  
Vice President



Railroad Equipment Lease

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.:  
COUNTY OF ALLEGHENY )

On this 13<sup>th</sup> day of December, 1989, before me personally appeared *M R SEIPLER*, to me personally known, who, by me being duly sworn, says that he is a Vice President of Elgin, Joliet & Eastern Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, and that said instrument was signed and sealed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

My commission expires

Notarial Seal  
Nancy Gestehr, Notary Public  
Monroeville Boro, Allegheny County  
My Commission Expires June 22, 1991

*Nancy Gestehr*  
Notary Public

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.:  
COUNTY OF ALLEGHENY )

On this 13<sup>th</sup> day of December, 1989, before me personally appeared *JOAN L. BALADA*, to me personally known, who, by me being duly sworn, says that he is a Vice President of Mellon Financial Services Corporation #3, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires *February 3, 1992.*

*Jacqueline K. Schultz*  
Notary Public

NOTARIAL SEAL  
JACQUELINE K SCHULTZ, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES FEB 3, 1992

Member, Pennsylvania Association of Notaries